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Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| _____ | : | ECF Case |
| ANGELO PENA, ROLANDO ROJAS, JOSE | : | |
| DIROCHE, and FRANKLIN SANTANA, | : | |
| individually and on behalf of others similarly | : | CIVIL ACTION NO.: 07-CV-7013 (RJH) |
| situated, | : | |
| | : | <u>AFFIDAVIT OF DAVID SAPERSTEIN</u> |
| Plaintiffs, | : | |
| | : | |
| v. | : | |
| | : | |
| SP PAYROLL, INC., NICHOLAS PARKING, | : | |
| CORP., IVY PARKING, CORP., BIENVENIDO, | : | |
| LLC, CASTLE PARKING CORP., SAGE | : | |
| PARKING CORP., and SAM PODOLAK, | : | |
| | : | |
| Defendants. | : | |
| _____ | : | |

STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

DAVID SAPERSTEIN, being duly sworn, deposes and says:

1. I am currently a supervisor and the payroll manager for SP Payroll, Inc. ("SP Payroll"). I began working for SP Payroll in 2002 as a supervisor and became the payroll manager in mid-2003. In my capacity as payroll manager, I was and currently am responsible

for the processing of the payrolls for the various defendants in this action, including, Nicholas Parking, Corp. (“Nicholas Parking”), Ivy Parking, Corp. (“Ivy Parking”), Bienvenido, LLC (“Bienvenido Parking”), Castle Parking Corp. (“Castle Parking”), and Sage Parking Corp. (“Sage Parking”) and Sam Podolak (“Podolak”) (collectively, “Defendants”) in the above-captioned action.

2. This affidavit is based on my first hand knowledge as the payroll manager of SP Payroll and a review of the business records of the Corporate Defendants. I submit this affidavit in support of Defendant’s Fed. R. Civ. P. 56 motion for partial summary judgment.

3. Since the time that I became responsible for the payroll function in mid-2003, employees have been paid on a weekly basis.

4. It is my understanding that prior to that time, employees were also paid on a weekly basis.

5. Since the time that I became responsible for the payroll function, all employees have been paid New York State minimum wages for all regular hours up to forty in one week and time and one half of that rate for all overtime hours, in excess of forty in one week. Compliance with New York State’s minimum wage is compliance with the federal minimum wage since the federal minimum is less than the state minimum wage.

6. Since the time that I became responsible for the payroll function in mid 2003 until February 2006, employees have received a single check for their regular and overtime wages and have also received cash to compensate them for their lunch period (“lunch cash”) for each day on which they worked.

7. Beginning with the paycheck for the period ending February 12, 2006, virtually all employees, including all of the plaintiffs in this action who were employed after February 12,

2006, stopped receiving additional cash and pay for lunch on each day worked was included in all employee paychecks.

The Employment Periods of the Named Plaintiffs and Opt-in Plaintiffs

8. Angelo Pena received his first paycheck on or about October 19, 2003 and continues to work at one of the Corporate Defendants.

9. Rolando Rojas received his first paycheck on or about July 1, 2003 and received his last paycheck on or about January 21, 2007.

10. Jose Colon Diroche received his first paycheck on or about February 17, 2003 and received his last paycheck on or about September 23, 2007.

11. Franklin Santana received his first paycheck on or about June 1, 2003 and continues to work for one of the Corporate Defendants.

12. Christian Santos Vargas received his first paycheck on or about November 13, 2005 and received his last paycheck on or about January 1, 2006.

13. Luis Ramon Luna received his first paycheck on or about August 11, 2003 and received his last paycheck on or about November 14, 2004.

14. Miguel Alcantara received his first paycheck on or about mid June 2003 and received his last paycheck on or about October 15, 2006.

15. Miguel Garcia received his first paycheck on or about June 23, 2003 and received his last paycheck on or about May 1, 2005.

16. Miguel Rojas received his first paycheck on or about July 1, 2003 and received his last paycheck on or about November 12, 2006.

17. Patricio Gonzalez was already working for one of the Corporate Defendants at the time that I became responsible for the payroll. He continued to work for the Corporate Defendants and received his last paycheck on or about September 16, 2007.

18. It is my understanding that Mr. Gonzalez entered into an agreement with Mr. Podolak in which he received \$5,000.00 and acknowledged that Defendants did not owe him any additional wages. (A copy of that agreement is attached to the Walker Affidavit as Exhibit R.)

19. It is also my understanding that shortly after he made this acknowledgement, Mr. Gonzalez left the United States.

20. Victor Gonzalez received his first paycheck on or about June 6, 2005 and received his last paycheck on or about January 29, 2006.

21. Jose De Arce Reyes received his first paycheck on or about March 8, 2004 and received his last paycheck on or about October 10, 2004.

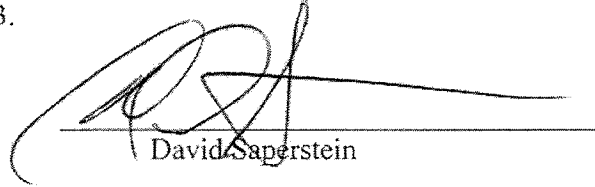
22. Edison Alvarez was already working for one of the Corporate Defendants at the time that I became responsible for the payroll. He continued to work for the Corporate Defendants and received his last paycheck on or about January 22, 2006.

23. In my review of the records of the Corporate Defendants, I located a document signed by Mr. Alvarez in which he admits that he has been working only 40 hours a week and has been paid in full for all hours through December 27, 2002. (A copy of this document is attached to the Walker Affidavit as Exhibit S.)

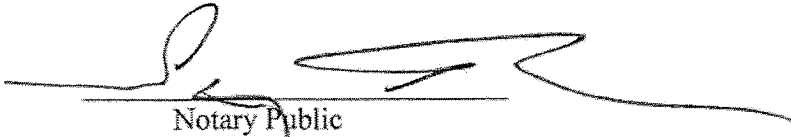
24. It is my understanding that Mr. Alvarez requested that he be paid by check for all regular hours and that he receive overtime in cash due to a personal issue.

25. The Corporate Defendants accommodated Mr. Alvarez's request. Nonetheless, my review of the cash payments made to Mr. Alvarez during his tenure with the Corporate

Defendants reveals that he received \$43,533.00 in cash and that, after accounting for his cash overtime wages, he was overpaid by \$13,090.13.


David Saperstein

Sworn to and subscribed before
me this 10 day of July, 2008


Notary Public

STANLEY TISCHLER
Commissioner of Deeds
City of New York • N.Y. 4-3961
Certificate Filed in New York County
Commission Expires May 31, 2010